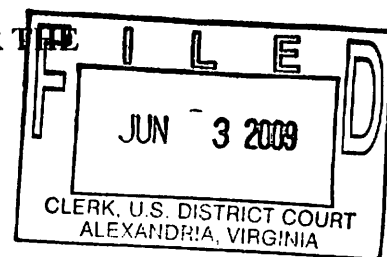


IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division



UNITED STATES OF AMERICA

v.

WILLIAM J. JEFFERSON,
Defendant.

CRIMINAL No. 1:07cr209

ORDER

This matter is before the Court on defendant's objections, pursuant to Rule 106, Fed. R. Evid., to certain excerpts of recorded conversations the government intends to introduce in its case-in-chief. For the various government exhibits to which he objects, defendant has proposed additional excerpts that he argues the government should be ordered to introduce under Rule 106.

Rule 106 provides that "[w]hen a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it." The purpose of Rule 106 "is to prevent a party from misleading the jury by allowing into the record relevant portions of the excluded testimony which clarify or explain the part already received." *United States v. Wilkerson*, 84 F.3d 692, 696 (4th Cir. 1996). Importantly, Rule 106 does not provide a basis for "the admission of self-serving, exculpatory statements made by a party which are being sought for admission by that same party." *United States v. Lentz*, 524 F.3d 501, 526 (4th Cir. 2008) (internal quotation marks and citations omitted). Rather, a district court should only order a party to introduce additional portions of a recording if the additions are "necessary to avoid misleading the jury or to place the portions

admitted into proper context.” *Id.*

These principles, applied here, compel the following conclusions with respect to each of defendant’s completeness objections:

1. Gov’t Ex. 105-2 & 105-3: Defendant’s proposed addition between these two exhibits (excerpts from a May 6, 2005, conversation between Mody and Yahyah) is not necessary to avoid misleading the jury. In the government’s excerpts, Yahyah explains to Mody the need to have meetings with high-level Nigerian government officials, whereas defendant’s proposed addition consists of Yahyah describing the technical aspects of the agreement and Mody wishing she was with Yahyah, Jackson, and defendant to work on the joint venture’s proposal to NITEL.

Accordingly, defendant’s completeness objection to these exhibits is overruled.

2. Gov’t Ex. 110-1: Defendant’s proposed addition before this exhibit (an excerpt from a May 31, 2005, meeting between Mody and defendant) is not necessary to avoid misleading the jury. Defendant’s proposed addition involves defendant explaining why he prefers receiving shares in W2-IBBS rather than stock options and hence is not necessary to clarify the portion selected by the government, in which defendant explains a document he prepared to show how shares of the company would be divided. Accordingly, defendant’s completeness objection to this exhibit is overruled.

3. Gov’t Ex. 110-3: Defendant’s completeness objection to this exhibit (an excerpt from a May 31, 2005, meeting between Mody and defendant) is sustained in part and overruled in part. The government’s excerpt contains a discussion between defendant and Mody about the role of Yahyah in the Nigerian joint venture. The beginning of defendant’s proposed addition (specifically, Mody’s first statement through her second statement) represents the beginning of that discussion and thus should be included to provide the government’s exhibit with proper

context. The remainder of defendant's proposed addition is not at all related to Yahyah's role and therefore does not need to be included under Rule 106.¹

4. Gov't Ex. 111-2 & 111-3: The government has agreed to include defendant's proposed addition at the beginning of Gov't Ex. 111-3. Defendant's objection to these exhibits is therefore moot.²

5. Gov't Ex. 114: Defendant's completeness objection to this exhibit (an excerpt from a June 8, 2005, meeting between Mody and defendant) is sustained. In the government's excerpt, defendant makes the following comment: "I'm not going to let [Jackson] let me use my good offices, whatever they are, and then, uh, to make arrangements, and, and then blow it up." Defendant's proposed addition provides some context to what defendant might have meant by "good offices" and therefore must be allowed under Rule 106.

6. Gov't Ex. 112-1 & 112-2: Defendant's completeness objections to these exhibits (excerpts from a June 17, 2005, meeting between Mody and defendant) are sustained in part and overruled in part. First, defendant proposes an addition before Gov't Ex. 112-1, which is an excerpt in which defendant relates a conversation in which he told Jackson his role in iGate needs to change. The beginning of defendant's proposed addition (specifically, defendant's first statement through his second statement) places the government's exhibit in proper context by explaining why defendant wanted Jackson's role in the company to change. The balance of

¹ To be clear, the portion of defendant's proposed addition that does not have to be included in the government's exhibit under Rule 106 begins with the following statement by defendant: "And then also being involved, uh, I want you to get a feel for Africa. But you'll have to go and do that."

² The government notes that it still plans to break this segment of conversation into two excerpts. Defendant has raised no argument that Rule 106 requires the government to merge the two excerpts, nor does any appear.

defendant's proposed addition does not provide necessary context.³ Second, defendant also proposes an addition between Gov't Ex. 112-1 and 112-2; this proposed addition also provides necessary context to the discussion of iGate's restructuring contained in the government's exhibits.

7. Gov't Ex. 117-1, 117-2 & 117-3: These three exhibits represents excerpts from a telephone conversation between Mody and defendant on July 7, 2005, when defendant was in Ghana. The government's exhibits consist primarily of defendant's descriptions of meetings with high-level Ghanaian officials, while defendant's proposed additions between these excerpts are portions of the conversation in which defendant primarily described meetings with private entities. Defendant's proposed additions are not necessary to place in proper context the three excerpts selected by the government, and hence defendant's completeness objections to these exhibits are overruled.

8. Gov't Ex. 119-1 & 119-2: These two exhibits are excerpts from a July 15, 2005, meeting at the U.S. Export-Import Bank. Specifically, Gov't Ex. 119-1 is an excerpt from immediately prior to defendant's brief visit to a credit committee meeting, and Gov't Ex. 119-2 is an excerpt from immediately after his visit. Defendant has proposed a short addition prior to Gov't Ex. 119-1, which is necessary to place the government's exhibits in context; without defendant's proposed addition, it is unclear what type of meeting defendant attended or why. Accordingly, defendant's completeness objection to these exhibits is sustained.

9. Gov't Ex. 120-1: Defendant's proposed addition before this exhibit (an excerpt from a July 15, 2005, meeting between Mody and defendant) is not necessary to avoid misleading the

³ To be clear, the portion of defendant's proposed addition that does not have to be included under Rule 106 begins with the following statement by Mody: "I bumped, I bumped into that."

jury. In the government's excerpt, defendant advises Mody that he wants to start a new company using iGate's technology, while defendant's proposed addition involves defendant relating a conversation he had with Jackson and Jackson's wife. Accordingly, defendant's completeness objection to this exhibit is overruled.

10. Gov't Ex. 123-3 & 123-4: Defendant's proposed addition between these exhibits (excerpts from a July 21, 2005, meeting between Mody and defendant) is not necessary to provide context or to prevent the jury from being misled. In the government's exhibits, Mody and defendant discuss the Vice President of Nigeria, while defendant's proposed addition includes their discussion of certain business aspects of the Nigerian joint venture. Accordingly, defendant's completeness objection to these exhibits is overruled.

11. Gov't Ex. 124-3, 124-4 & 124-5: These three exhibits represents excerpts from a conversation between Mody and defendant on July 26, 2005, in which they discuss the Nigerian Vice President. Defendant's proposes adding the short discussion between Gov't Ex. 124-4 and 124-5, in which defendant states that he would need to leave shortly to return to the House floor to vote. Defendant's proposed addition has no relevance to the conversation contained within the government's exhibits, and hence his completeness objection to these exhibits is overruled.

12. Gov't Ex. 146-1: This exhibit is a short excerpt from a June 26, 2005, telephone conversation between Jackson and defendant, in which they discuss iGate's restructuring. Defendant argues that the entire telephone conversation should be introduced, but fails to show why the balance of the conversation is necessary to avoid misleading the jury or to place the government's excerpt in context. Accordingly, defendant's completeness objection to this exhibit is overruled.

13. Gov't Ex. 150-1: This exhibit is a short excerpt from a July 13, 2005, conversation

between Jackson and defendant, in which they discuss iGate's liabilities. Although defendant proposes requiring the government to introduce the entire telephone conversation, defendant has not provided a transcript of the conversation to the Court. Defendant has not shown that the balance of the conversation is necessary to avoid misleading the jury or to place the government's excerpt in context. Accordingly, defendant's completeness objection to this exhibit is overruled.

Accordingly, for these reasons and for good cause,

It is hereby **ORDERED** that defendant's objections, pursuant to Rule 106, Fed. R. Evid., to certain excerpts of recorded conversations the government intends to introduce in its case-in-chief are **SUSTAINED IN PART** and **OVERRULED IN PART** as described herein.

The Clerk is directed to send a copy of this Order to all counsel of record.

Alexandria, Virginia
June 3, 2009



T. S. Ellis, III
United States District Judge